IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.914 of 2006
RADHA DEVI
Versus
STATE OF BIHAR & ANR
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6. 28.8.2008. This application has been filed against the order dated 2nd August,2006 passed by Principal Judge, Family Court, Bhagalpur in Misc. Case No.28 of 2005.

Heard the learned counsel for both the parties.

It appears from the record that this petitioner is legally married wife of opposite party no.2. Admittedly, they are living separately. Certain cases are also pending against him including a case under section 498A of the I.P.C. The petitioner filed a petition under section 125 Cr.P.C. against the opposite party no.2 for grant of maintenance which has been rejected by the Principal Judge, Bhagalpur.

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It appears from perusal of impugned order that the learned Family Judge has rejected the petition filed under section 125 Cr.P.C. only because matrimonial case for restitution of conjugal life as well as criminal case under section 498A I.P.C. had earlier been filed by the petitioner. The learned Family Judge ultimately held that since the petitioner has not come with a clean hand and there is some hidden motive and, hence she is not entitled for maintenance.

From above facts as well as the finding of the lower court, it is quite clear that the court below has not properly appreciated the purpose of section 125 Cr.P.C. Section 125 Cr.P.C. is a measure of

social justice as well as beneficial to woman and children. The court should be liberal in grant of maintenance in order to protect the woman or children from starvation and vagrancy. Apparently, the court below has wrongly refused to pay maintenance purely on extraneous consideration.

Accordingly, this application is allowed. The impugned order is hereby set aside and the matter is remitted back to the court below for fresh decision in accordance with law as well as the observation made above. The case must be decided within four months of receipt of this order.

(Ghanshyam Prasad)

N.H./

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